UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BARBARA A. ELLIS,

Plaintiff,

Case No. ___________________

v.

Hon. ______________________

CHASE HOME FINANCE, LLC, JPMORGAN CHASE BANK, N.A., DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee, and UNKNOWN TRUST, the currently unknown asset-backed security at issue,

Defendants.

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NOTICE OF REMOVAL

Defendants JPMorgan Chase Bank, N.A., on its own behalf and as successor by merger to Chase Home Finance, LLC (collectively referred to as "Chase"), and

Deutsche Bank National Trust Company, solely and exclusively in its capacity as Trustee for Washington Mutual Mortgage Pass-Through Certificates, Series 2004-AR ("Trustee"), improperly named as "Deutsche Bank National Trust Company, as Trustee" (collectively "Defendants"), by their attorneys, Dykema Gossett PLLC, hereby remove this action from the Monroe County Circuit Court to the United States District Court for the Eastern District of Michigan, Southern Division. In support of their Notice of Removal, Defendants state as follows:

1. On or about February 28, 2014, Plaintiff Barbara A. Ellis ("Plaintiff") commenced this action against Defendants by filing her Complaint in the Monroe County Circuit Court.

2. Defendants received copies of Plaintiff's Summons, Complaint, and exhibits to the Complaint on or about March 17, 2014.

3. Plaintiffs' 269-paragraph Complaint alleges various improprieties in the servicing and foreclosure of a mortgage (the "Mortgage") granted by Plaintiff, encumbering real property located at 8293 Huron River Drive, South Rockwood, Michigan (the "Property"). Plaintiff claims, *inter alia*, that Defendants violated the federal Truth in Lending Act, 15 U.S.C. § 1641(g) ("TILA") (Compl., Counts III and X), the federal Real Estate Settlement Procedures Act ("RESPA") (*id.*, Counts IV through IX, XI), as well as Michigan state statutes governing foreclosure and debt collection, and various tort and breach of contract claims. In addition to

money damages, Plaintiff requests that the Court "[e]nter a Judgment setting aside the sheriff's sale, and voiding the Sheriff's Deed[.]" (*Id.*, passim). Copies of Plaintiffs' Complaint, Motion for Temporary Restraining Order, and accompanying exhibits, which constitute all process, pleadings, and orders received by Defendants, are attached hereto as **Exhibit 1.**

4. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is filed within thirty (30) days of the first date upon which Defendants received service of the pleadings setting forth the claim for relief upon which this removal is based.

5. Upon information and belief, the Defendant named as "Unknown Trust" has not been served. Only those defendants properly joined and served must join and concur in the removal notice pursuant to 28 U.S.C. § 1446. *See Mehney-Egan v. Mendoza*, 124 F. Supp. 2d 467, 472 (E.D. Mich. 2000) (citation omitted); *Broom v. TRW Credit Data*, 732 F. Supp. 66, 69 (E.D. Mich. 1990) ("The remaining two defendants . . . have yet to be served, and therefore their joinder in the petition is not relevant.").

6. The Defendant named as "Unknown Trust" is also a nominal defendant, whose consent is not required for removal. *See Jackson v. Bank of America, N.A.*, No. 13-12430, 2013 WL 4670762, at *3 (E.D. Mich. Aug. 30, 2013) (denying motion to remand because "[t]he complaint does not contain any substantive allegations of wrongdoing by the Trust, which itself is simply a pool of

loans managed by [the trustee]. As such, the Trust is a nominal defendant whose consent was not required for removal.") (internal citations omitted).

7. This matter is a civil action over which this Court has original diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds the sum of $75,000, exclusive of interest, costs, and attorney fees, and this action is between citizens of different states, as demonstrated more fully below:

(a) Plaintiff is a Citizen of Michigan: For purposes of diversity jurisdiction, a person is a citizen of the state in which he or she is domiciled. *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828 (1989). "[D]omicile is established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there." *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48, 109 S. Ct. 1597, 1608 (1989). Defendants are informed that Plaintiff is domiciled in, and is a citizen of, the State of Michigan. Specifically, in the Complaint, Plaintiff alleges that she resides in South Rockwood, Michigan. Plaintiff does not allege that she has any intention to leave Michigan. Thus, for diversity purposes, Plaintiff's domicile is in Michigan, and, therefore, Plaintiff is a citizen of Michigan.

(b) Chase is a Citizen of Ohio: Chase is a national banking association. For purposes of diversity jurisdiction, a national banking association is deemed to be a citizen of the state in which it is located. 28 U.S.C. § 1348. A national banking association is "located" in the "State designated in its articles of association as its main office." *Wachovia Bank v. Schmidt*, 546 U.S. 303, 318 (2006). According to its Articles of Association, Chase's main office is in the City of Columbus, State of Ohio. Thus, for purposes of diversity jurisdiction, Chase is a citizen of Ohio.

(c) Trustee is a Citizen of California: Trustee is a national banking association with its main office in California. For diversity purposes, a national banking association is deemed a citizen of the state designated in its articles of association as its main office. *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303 (2006) (*citing* 28 U.S.C. § 1348). Accordingly, Trustee is a citizen of California, and is not a citizen of Michigan, within meaning of 28 U.S.C. § 1332(c).

(d) The "Unknown Trust" is a Citizen of California: Although Plaintiff lists "Unknown Trust" as a Defendant in this matter, Plaintiff alleges that this "Unknown Trust" is "managed by the Trustee . . . which is headquartered at 1761 East Saint Andrew Place, Santa Ana, CA 92705-4934." (Compl., ¶ 4). For diversity purposes a trust is a citizen of whatever state the trustee is a citizen of. *Arvest Bank v. Byrd, No. 10-2004,* 2011 WL 3844189, at *7 (W.D. Tenn. Aug. 26, 2011), *citing May Dep't Stores Co. v. Fed. Ins. Co.*, 305 F.3d 597, 599 (7th Cir. 2002); *Homfeld II, L.L.C. v. Comair Holdings, Inc.*, 53 Fed. App'x 731, 732 (6th Cir. 2002); *Gen. Ret. Sys. of the City of Detroit v. UBS AG*, No. 10–CV–13920, 2010 WL 5296957, at *4 (E.D. Mich. Dec. 20, 2010). As described above, Trustee is a citizen of California, and therefore, for diversity purposes, the "Unknown Trust" is also a citizen of California.

8. Accordingly, complete diversity exists because Plaintiff is a citizen of Michigan, Chase is a citizen of Ohio, and Trustee and the "Unknown Trust" are citizens of California.

9. Pursuant to L.R. 81.1(a) and (b) and 28 U.S.C. § 1332(a), the amount in controversy exceeds the sum or value of $75,000, exclusive of interest, costs, and attorney fees. In support of this allegation, Defendants submit the following facts and reasons:

(a) Plaintiff's Complaint seeks, *inter alia*, an order setting aside the foreclosure of her Mortgage and the foreclosure sale of the Property, and a declaratory judgment determining that Defendants violated various federal and state statutes in foreclosing the Mortgage and selling the Property at a foreclosure sale. When a plaintiff seeks specific performance, declaratory relief, or injunctive relief, the amount in controversy is measured by the value of the subject matter of the litigation. *Lorimer ex rel. Estate of Lorimer v. Berrelez*, 331 F. Supp. 2d 585, 591 (E.D. Mich. 2004); *see also Cohn v. Petsmart*, 281 F.3d 837, 840 (9th Cir. 2002) (citing *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 347 (1977)) (holding "[i]n actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation."); *Nordica S.P.A. v. Icon Health & Fitness, Inc.*, 2009 WL 2462570, *6, fn. 4 (D.N.H. 2009) (citing *Lee Sch. Lofts, L.L.C. v. Amtax Holdings 106 L.L.C.*, 2008 WL 4936479, at *3 (E.D. Va. Oct. 29, 2008)) (observing "[w]hen specific performance is the desired remedy, the amount in controversy requirement is satisfied if 'either the "direct pecuniary value" of the right the plaintiff seeks to enforce . . . or the cost to the defendant of complying with any prospective equitable relief exceeds $75,000.'"); *Neely v. Consol Inc.*, 25 Fed. Appx. 394, 400 (6th Cir. 2002) (holding amount in controversy was equal to amount of lease).

(b) Here, the subject matter of the litigation is the Property and/or the loan to Plaintiff secured by the Mortgage. Documents attached to the Complaint indicate that Plaintiff's mortgage loan was originally valued at $240,000.00, (Ex. 1, Complaint, Ex. A), and that the Property was sold at a foreclosure sale for $155,000.00 (*Id.*, Ex. X). The amount in controversy therefore exceeds $75,000.

(c) While Defendants deny the allegations in Plaintiff's Complaint, deny any liability to Plaintiff whatsoever, and deny that Plaintiff is entitled to any relief, if Plaintiff's allegations are proven to be true, the amount in controversy exceeds the sum or value of $75,000, exclusive of interest, costs, and attorney fees.

10. This Court also has federal question jurisdiction of this action pursuant to 28 U.S.C. § 1331. Plaintiff alleges claims, *inter alia*, under the federal Truth in Lending Act, 15 U.S.C. § 1641(g) ("TILA") (Compl., Counts III and X), and the federal Real Estate Settlement Procedures Act ("RESPA").

11. In accordance with 28 U.S.C. § 1446(d), a Notice of Filing of Removal and a copy of this Notice of Removal will be filed with the Monroe County Circuit Court. A copy of that Notice will be served upon Plaintiff.

Respectfully submitted,

DYKEMA GOSSETT PLLC

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Dated: March 20, 2014

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2014, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, and a copy will be mailed to:

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